



(916) 323-7715

August 7, 1985

Mr. Dick Frank
San Luis Obispo County Assessor
Room 100, County Government Center
San Luis Obispo, CA 93408

Attention: Ms. Marion I. West
Deputy County Assessor

Dear Ms. West:

This is in response to your July 30, 1985, letter to Mr. William Grommet wherein you asked whether property used but not owned or leased by a school district for district administration offices is eligible for the public schools exemption.

Article XIII, Section 3 of the California Constitution provides that the following are exempt from property taxation:

"(d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities."

Section 202(a)(2) and (3) of the Revenue and Taxation Code is to the same effect.

The phrase "property used exclusively for public schools" was construed by the California Supreme Court in Ross v. City of Long Beach, 24 Cal.2d 258. In that case, plaintiffs had leased both real property and a building thereon to the Long Beach City High School District for use exclusively as and for a public school, and they brought an action to recover taxes levied upon the property and paid by them under protest. As the property had been used exclusively for public school purposes, it was held exempt from taxation on that ground. The Court pointed out that the exemption of property used for public school purposes is not for the benefit of the private owner who may rent his property for said purposes,

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but for the advantage of the school district which may be compelled to rent property rather than to buy land and erect buildings thereon to be used for the maintenance of its schools (pgs. 262 and 263). It went on to state that the plaintiffs/lessors would have been in a much more advantageous position (in seeking to have their property held exempt) had they permitted the school district to use their property without the payment of rent (pg. 263). A copy of the Court's decision therein is enclosed for your information and review.

Thus, it is whether property is used exclusively for public schools which is determinative for purposes of the public schools exemption, not whether property is owned by or leased to or otherwise made available to public schools. As it appears that the property has been used exclusively for public school purposes (district administration offices), the property should be eligible for the exemption, assuming claim(s) therefor have been or will be filed, etc. See Revenue and Taxation Code Sections 254, 255, 259.10, and 270 in this regard.

While Section 259.10(b) provides that the affidavit for the exemption shall show the terms of the agreement by which the public school obtained the use of the property, and that when the agreement is in writing, a copy thereof shall accompany the affidavit, note that the term "agreement" rather than "lease agreement" or "rental agreement" is used therein, consistent with the above.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

Enclosure

cc: Mr. William Grommet

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section